HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

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Writ Petition No.21065 of 2002

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Dated: 20th December, 2005

Between:

Y.Venkateswara Chetty S/o.Sri Y.Kannaiah Chetty,

R/o. Kanipakam, Irala Mandal, Chittoor District.

..... PETITIONER

AND

1.The Government of Andhra Pradesh, rep. by its Principal

Secretary, Revenue (Endowments-II) Department,

Secretariat, Hyderabad and others.

.....RESPONDENTS

HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

Writ Petition No.21065 of 2002

ORDER:

This writ petition has been filed by Y.Venkateswara Chetty questioning the draft notification under Section 4(1) and declaration under Section 6 of the Land Acquisition Act, 1894 (for short, 'the Act') in respect of the lands owned by him.

2. Draft notification has been issued on 20.06.2001 proposing the acquisition of lands specified in the schedule thereto situated at Kanipakam village, Irala

Mandal, Chittoor District for a public purpose *to wit* providing amenities to the pilgrims of Sri Varasidhi Vinayaka Swamy Temple, Kanipakam and an urgency clause has also been invoked as provided under Section 17(4) of the Act and thereby enquiry under Section 5-A of the Act has been dispensed with. It is the grievance of the petitioner that the purpose for which the lands proposed to be acquired is vague and therefore, the notification issued under Section 4(1) of the Act as well as dispensing with the enquiry under Section 5-A of the Act is not legal and proper and the same is required to be set aside. It is further averred in the writ affidavit that in spite of invoking the urgency clause possession has not been taken over and thus, dispensing with the enquiry under Section 5-A of the Act is not valid.

3. Counter affidavit has been filed by the respondents. Details of the counter affidavit are not required to be dealt with elaborately in view of the order proposed to be passed.

4. Heard learned counsel appearing for the petitioner, learned Government Pleader for Land Acquisition appearing for the respondents 1 to 4 and learned counsel appearing for the 5th respondent.

5. Learned counsel appearing for the petitioner submits that the purpose for which the lands are proposed to be acquired is very vague and therefore, the notification issued under Section 4(1) of the Act is not legal and proper and the same is liable to be set aside. It is also submitted by him that the alleged purpose does not warrant dispensing enquiry under Section 5-A of the Act. In support of his submissions reliance has been placed on the decisions of the Supreme Court in ***Munshi Singh v. Union of India; Union of India v. Krishan Lal Arneja*** and the decision of our High Court in ***Chatapalli Nadipi Subbarayudu v. District Collector, Kurnool***. In ***Union of India v. Krishan Lal Arneja*** (2nd supra) it has been held by the Supreme Court that the authority must have subjective satisfaction of the need for invoking urgency clause under Section 17 of the Act keeping in mind the nature of the public purpose, real urgency that the situation demands and the time factor *i.e.* whether taking

possession of the property can wait for a minimum period within which the objections could be received from the land owners and the inquiry under Section 5-A of the Act could be completed. Para.17 of the judgment needs to be noted and it is thus:

> "Section 17 confers extraordinary powers on the authorities under which it can dispense with the normal procedure laid down under Section 5A of the Act in exceptional case of urgency. Such powers cannot be lightly resorted to except in case of real urgency enabling the Government to take immediate possession of the land proposed to be acquired for public purpose. A public purpose, however, laudable it may be, by itself is not sufficient to take aid of Section 17 to use this extraordinary power as use of such power deprives a landowner of his right in relation to immovable property to file objections for the proposed acquisition and it also dispenses with the inquiry under Section 5-A of the Act. The Authority must have subjective satisfaction of the need for invoking urgency clause under Section 17 keeping in mind the nature of the public purpose, real urgency that the situation demands and the time factor *i.e.,* whether taking possession of the property can wait for a minimum period within which the objections could be received from the landowners and the inquiry under Section 5-A of the Act could be completed. In other words, if power under Section 17 is not exercised, the very purpose for which the land is being acquired urgently would be frustrated or defeated. Normally, urgency to acquire a land for public purpose does not arise suddenly or overnight but some times such urgency may arise unexpectedly exceptionally or extraordinary depending on situations such as due to earthquake, floods, or some specific time bound project when the delay is likely to render the purpose nugatory or infructuous. A citizen's property can be acquired in accordance with law but in the absence of real and genuine urgency, it may not be appropriate to deprive as aggrieved party of a fair and just opportunity of putting forth its objections for due consideration of the acquiring authority. While, applying the urgency clause, the State should indeed act with due care and responsibility invoking urgency clause cannot a substitute or support for the laxity, lethargic or lack of care on the part of the State Administration".

In ***Chatapalli Nadipi Subbarayudu v. District Collector, Kurnool*** (3rd cited) it has been held by our High Court that when possession of land was not taken within three months as mandated under Section 17(5) (a) (b) of the Act as amended by A.P. Act, 1983, and deposit of 80% of compensation amount before taking possession of land not made, dispensing with Section 5-A enquiry is unjustifiable. Para 13 of the judgment reads as follows:-

> "In the light of the material placed before this Court and on careful scrutiny of the stand taken by Respondent No.2 in the counter-affidavit and also the contents of the notification issued under Section 4(1) of the Act, this Court is specified that the invocation of the urgency clause under Section 17(4) of the Act definitely cannot be sustained. Apart from this aspect of the matter it is no doubt brought to the notice of this Court that possession also was not taken within three months as specified by Section 17(5) (A) of the Act. Further, it was also brought to the notice of this Court that the deposit required to be made in case of invocation of urgency clause also had not been complied with. In the light of the reasons, which had been narrated in detail in the affidavit filed in support of the writ petition, this Court is of the considered opinion that dispensing with Section 5-A enquiry is totally unjustifiable. No doubt, the Counsel representing the respondents had placed reliance on the decision of the Division Bench in N. Ammorayya V. Dist. Social Welfare Officer, AIR 1979 AP 159, which is distinguishable on facts".

6. The learned Government Pleader for Land Acquisition appearing for the respondents 1 and 4 submits that except the land of the petitioner, possession of the other lands covered under the Notification under Section 4(1) and declaration under Section 6 of the Act has been taken and handed over to the beneficiary *i.e.* 5th respondent-Temple and therefore, the writ petition is liable to be dismissed.

7. In the light of the material placed on record, possession of the total extent of land sought to be acquired in the notification under Section 4(1), except the extent of land claims by the petitioner, has been taken over and the beneficiary-5th respondent/temple has been put in possession of the same. The principal contention of the petitioner is that the purpose for which the lands are proposed to be acquired is very vague and therefore, the landowners are not able to file their objections effectively. This contention can be repelled by referring the notifications. It is explicit from the notification that those lands are required for providing amenities to the pilgrims of 5th respondent-Temple. A similar question came up for consideration in ***K.Ehirajulu Naidu and another Vs. Govt. of A.P. rep. by its Special Chief Secretary, Hyderabad and others*** and in ***M.Reddappa and two others Vs. Govt. of A.P. rep. by Special Chief Secretary, Endowments Department, Secretariat, Hyderabad and others***. It has been held in ***K.Ehirajulu Naidu and another Vs. Govt. of A.P. rep. by its***

Special Chief Secretary, Hyderabad and others *(4th supra)* that providing amenities to pilgrims come within the ambit of public purpose. I deem it appropriate to refer the relevant portion in the order passed in the aforesaid writ petition and it is thus:

> "The acquisition of the lands in question is for public purpose for providing amenities for pilgrims of Sri Varasiddi Vinayakaswamy Temple in Kanipakam. The law is well-settled that the notification under Section 4 of the Act can be struck down by the Court only where the mandatory requirements of Section 4(1) have been violated and where any of the statutory conditions for acquisition has not been satisfied. In the instant case, there is no allegation of any *mala fides* nor the public purpose for which the land acquired is disputed. There is also no allegation of violation of any statutory requirements. The question whether it is a case of urgency is a subjective one. This Court is not competent to enquire into the sufficiency of the grounds for forming such opinion. The settled principle of law is that there is a presumption of regularity of official acts and mere denial that the Government had not formed an opinion as to the urgency or the allegation that the Government did not apply its mind to the question of urgency cannot be a ground warranting interference by this Court".

It is settled proposition that providing amenities to pilgrims come within the ambit of public purpose. According to Section 4 of the Act, it is only necessary to state in the notification that the land is needed for the public purpose. Wording of Section 5-A of the Act would make it further clear that all that is necessary to be specified in a notification under Section 4 is that the land is needed for a public purpose. One reason for specification of the particular public purpose in the notification is to enable the person whose land is sought to be acquired to file objection under Section 5(A) of the Act. Unless a person is told about the specific purpose of the acquisition, it may not be possible for him to file a meaningful objection against the acquisition under Section 5-A of the Act. I think that the purpose specified in a notification under Section 4 of the Act is sufficient to enable an objection to be filed under Section 5-A of the Act. The purpose for which the lands are proposed to be acquired is mentioned in the notification dated 06.11.2001. The contention of the petitioner that the purpose notified under Section 4(1) notification is ambiguous has no merit.

8. Coming to the dispensing with the enquiry under Section 5-A of the Act; as on this day, possession of the lands has not been taken and sufficient time has been elapsed since 4(1) notification. In the circumstances, I deem it appropriate to direct the Land Acquisition Officer-3rd respondent to afford an opportunity to the writ petitioner and hold enquiry under Section 5-A of the Act in respect of the lands claimed by him.

9. In the light of the reasons recorded supra, the petitioner shall file his objections within 15 days from today and thereupon the Land Acquisition Officer-cum-Revenue Divisional Officer, Chittoor-3rd respondent is directed to afford an opportunity to the petitioner and to hold enquiry under Section 5-A of the Act and proceed further in accordance with the law.

10. Accordingly, the writ petition is disposed of. No costs.

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B.SESHASAYANA REDDY, J.

Date: 20th December, 2005.

Note:

Issue C.C. within a week

B/O

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